

**Notice of Allowability**

Application No.

09/991,433

Applicant(s)

BROLIDEN ET AL.

Examiner

Zachariah Lucas

Art Unit

1648

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response of December 9, 2003.
2. ☒ The allowed claim(s) is/are 44-57 and 59-73.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of the Claims***

1. Claims 44-57, and 59-73 are currently pending and under consideration in the application.
2. In view of the amendments to the claims and other submissions and arguments submitted in and with the Response filed on December 9, 2003, all outstanding objections and rejections are withdrawn, and the pending claims are allowed.

### ***Drawings***

3. New Drawings were required in the prior action. However, in view of the Applicant's arguments with respect to this requirement, it is withdrawn.

### ***Specification***

4. **(Prior Objection- Withdrawn)** The drawing of Figure 9 was objected in the prior action. The objection is withdrawn in view of Applicant's arguments, which were persuasive.

### ***Claim Objections***

5. **(Prior Objections-Withdrawn)** The prior objections to claims 45, 46, 60, and 61 are withdrawn in view of the amendment of these claims.
6. **(Prior Objection-Withdrawn)** The objection of claim 57 and 58 is withdrawn in view of the cancellation of claim 58 and the amendment of claim 57.

### ***Claim Rejections - 35 USC § 112***

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7. **(Prior Rejection- Withdrawn)** Claims 74 was rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In view of the cancellation of this claim from the application, the rejection is withdrawn.

8. **(Prior Rejection- Withdrawn)** Claim 74 was rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for methods of inhibiting the growth of hematopoietic cells by administering to a subject a B19 parvovirus VP2 capsid, or certain fragments thereof, does not reasonably provide enablement for using any fragment of the VP2 capsid to treat a subject for any hematopoietic disorder. The above claim has been cancelled. The rejection is therefore withdrawn.

9. **(Prior Rejection-Withdrawn)** Claims 44-46, 57-61, and 72-74 were rejected in the prior action under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The rejection is withdrawn in view of the amendment to the claims indicating that the capsid agents are from the B19 parvovirus capsid.

10. **(Prior Rejection- Withdrawn)** Claims 44-46, 57-61, and 72-74 were rejected in the prior action under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for methods of inhibiting hematopoiesis with certain B19 parvovirus capsid agents, does not reasonably provide enablement for methods of using any capsid agents, or any capsid agent comprising the sequence QQY. The rejection is withdrawn in view of the amendment to the claims indicating that the capsid agents are from the B19 parvovirus capsid.

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***Double Patenting***

11. **(Prior Rejection- Withdrawn)** Claims 45, 46, 58, 60, 61 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23-24, 28, 29, 32-34 of copending Application No. 10/200,616. The Applicant has submitted a Terminal Disclaimer with reference to the copending application. The rejection is therefore withdrawn.

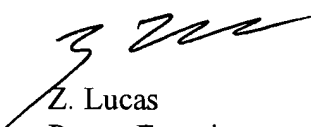
***Conclusion***


12. In view of the above withdrawal of all outstanding objections and rejections in the application, claims 44-57, and 59-73 are allowed.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Z. Lucas  
Patent Examiner

  
JAMES HOUSEL 2/23/04  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600